

PROBATION OFFICERS ADVISORY GROUP to the United States Sentencing Commission

Richard Bohlken, Chair
10th Circuit



Sean Buckley, 1st Circuit
John P. Bendzunas, 2nd Circuit
Beth Neugass, 3rd Circuit
Kristi O. Benfield, 4th Circuit
Juliana Moore, 5th Circuit
Vacant, 6th Circuit
Lori C. Baker, 7th Circuit
Rick Holloway, 8th Circuit
Jaime J. Delgado, 9th Circuit
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October 28, 2015

The Honorable Patti B. Saris, Chair
United States Sentencing Commission
Thurgood Marshall Building
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington D.C. 20008-8002

Dear Judge Saris,

The Probation Officers Advisory Group (POAG) met telephonically on October 27, 2015, to discuss and formulate recommendations to the United States Sentencing Commission regarding the Commission's Notice of Proposed Amendment to the Sentencing Guidelines dated August 12, 2015. The proposed amendment addresses the "crime of violence" definitions in the sentencing guidelines and other related issues.

In preparation for the October 27th meeting, POAG representatives reached out to all district representatives across the country, and solicited feedback. In response, POAG obtained useful information/input from several of the 94 districts.

The overwhelming sentiment in response to the amendment was positive. As the United States Sentencing Commission (USSC) knows, since 2008, POAG has written on several occasions expressing our desire for one "crime of violence" definition throughout the sentencing guidelines. We believe this amendment is a positive move in that direction. The amendment addresses issues raised by *Johnson v. United States*, 135 S. Ct. 2551 (2015), by eliminating the "residual clause" in the crime of violence definition in USSG §4B1.2. POAG also supports using the same definition in USSG §4B1.2 and USSG §2L1.2. A single "crime of violence" definition throughout the guidelines will help reduce confusion and maintain uniformity. POAG would also encourage a single definition for "controlled substance offense" and other terms used in multiple guidelines.

Although POAG stated a contradictory point of view in a recent position paper, POAG now believes the enumerated offenses listed in the proposed amendment are needed, and warranted. POAG received positive feedback on the enumerated offense definitions in the application notes at USSG §4B1.2. POAG feels the contemporary, generic definitions for the enumerated offenses will be helpful. Requests for additional enumerated offenses to be included were received from several district representatives and discussed, to include the following offenses (or offenses know by similar names): Aggravating Fleeing from a Law Enforcement Officer; Shooting at or from a Motor Vehicle or Shooting at or from an Occupied Dwelling/Building; and Battery on a Peace Officer. POAG would also recommends the amendment contain the noted exclusion of “Statutory Rape” as a “forcible sex act” and a possible corresponding definition for such an offense.

In the proposed amendment, under USSG §4B1.2, comment. (n2)(G)), POAG struggled to come to a consensus on a preference for [Burglary of a Dwelling] or [Burglary]. Strong points were made on both sides. While some liked the similarity and narrowness of “Burglary of a Dwelling,” others felt the broadness and uniformity of “Burglary” with the existing definition at 18 USC §924(e)(2)(B)(ii) was more desirable. In the same proposed application note, POAG concurs with the term [crime] instead of [felony].

With regard to the proposed changes to the requirements determining whether or not an offense will be classified as a “felony” under state law, POAG was unable to agree on the best course of action. Some believe the definition for a “felony” should remain unchanged with the only requirement being an offense be punishable by imprisonment for a term exceeding one year. With this argument, it is felt the current definition helps avoid unwarranted disparities across the various jurisdictions. Other POAG members agree with the proposed change requiring the offense be classified as a felony (or comparable classification) under the laws of the jurisdiction in which the defendant was convicted. This position is argued based on the belief this will help simplify the analysis. Additionally, many feel offenses classified as felonies at the state level, are more serious than offenses classified as misdemeanors, regardless of the sentence of imprisonment available for the conviction. Should the change in requirements be implemented, POAG unanimously agrees with the inclusion of the phrase [at the time the defendant was initially sentenced].

In closing, POAG appreciates the opportunity to express its views on the Proposed Amendment to the Sentencing Guidelines dated August 12, 2015, regarding the “crime of violence” definitions in the sentencing guidelines and other related issues. Although POAG does not unanimously agree on all the proposed changes, all do strongly believe this amendment is needed, and a move in the right direction. Should you have any further questions or require any clarification regarding the issues detailed above, please do not hesitate to contact us.

Respectfully,

Probation Officers Advisory Group
October 2015